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1949

File No. O.L.R.C. Bom/49

Legal **DEPARTMENT**

A **BRANCH**

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N/1615

Subject:— Opinions under the Bombay Land Revenue Code, 1879

P.128/E

C O N T E N T S.

Legal Department File No. O.L.R.C. Bom./49

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Nair/-

Office of the R.L.A.

Cancellation of grant of alluvial land ___

Land Revenue Code, 1879, sec.211.

The District Judge has held that the alluvial land did not vest in Government and upon that finding the grant of the alluvial land by Government would create no title in favour of the grantee. The correctness of this finding will naturally be tested in the appeal pending in the High Court. But so long as it stands it should be respected; and consequently it would be desirable to postpone the eviction of the applicants. Mr. Magenlal Haribhai Desai cannot in view of the interim injunction order of the High Court take possession of the land and consequently the Government's order of putting him in possession cannot be given effect until the interim injunction order is vacated

Id.P.H.L. S.2.
Remembrancer of Legal Affairs.

U.H. to R.D.No.1446, dated the 7th February 1949.

Nair/-

Office of the R.L.A.

Diversion of a public road for private use.

In Ardeshir Jeevanji Mistry v. Aimai Coverji, 57 Bombay 127, the High Court of Bombay held that under the ancient maxim "once a highway always a highway" Government had no right under section 37 of the Bombay Land Revenue Code to close or divert any existing public highway; that the power of disposal of land under section 37 of the Code could only be exercised by Government subject to the rights of way of the public; and that if Government wished to have any such power, legislation was necessary. As a consequence of that decision, Government amended the Bombay Land Revenue Code by inserting section 37A whereunder the rights of the public as well as of individuals over any diverted or disused public road can be extinguished without payment of any compensation for the extinction or diminution of the right of public highway over such road. It is presumed that the diverted road in question vests in Government. If so, the only feasible course open to Government to extinguish the right of public highway over it is to take section under section 37A of the Bombay Land Revenue Code after the new diversion is constructed. The Land Acquisition Act, 1894, cannot be resorted to for the purpose.

Id.P&L 18.2.
Remembrancer of Legal Affairs.

U.R. to P.W.D. No.2011 dated the 19th February 1940.

Nair/-

Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1948.

Bombay Local Boards Act, 1925. sec.3A(1)

Bombay Land Revenue Code sec.7.

Jurisdiction of District Local Board over merged area.

It appears that by Government Notification P. & S.D. No.2751/46-F, dated 15th June 1948 issued under the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1948, the Governor of Bombay inter alia directed that "the Pandu Mowas Thana and Talukas of Umbta Chhalisr and Sihora shall merge with and form part of the Kaira District and shall be administered accordingly." The question raised for consideration is whether this area has already merged in the Kaira district so that the District Local Board thereof could have jurisdiction over this area, or whether a fresh notification under section 7 of the Bombay Land Revenue Code including this area in the district of Kaira is necessary for the purpose.

By virtue of the Bombay (Enlargement of Area and Alteration of Boundaries) Order, 1948, issued by the Governor-General under section 290 of the Government of India Act, 1935, the Governor of Bombay by a notification No.2751/46-F dated the 15th June 1948 directed that this area should be included in the district of Kaira. The term "district" has not been defined either in the Government of India Act or in the General clauses Act. Ordinarily, therefore, that term will have to be given the meaning which is assigned to it under the Act which is applicable in respect of the revenue administration, that is to say, the Bombay Land Revenue Code. If so, a fresh notification under section 7 of the Bombay Land Revenue Code would not be necessary. However, a draft notification is already published by Government in the issue of Bombay Government Gazette dated the 13th January 1949 including this area in the Kaira district. Consequently, it would be safer to

issue ...

issue a final notification under section 7 of the Bombay Land Revenue Code including this area in the Kaira District so that by virtue of section 3A (1) of the Bombay Local Boards Act, 1923, this area might be deemed to be part of the Kaira District and the District Local Board thereof might have jurisdiction over it. On the issue of such final notification no further notification under the Bombay Local Boards would be necessary. The view taken by the Health and Local Government Department is correct.

Id.PML 23.2.
Remembrancer of Legal Affairs.

U.R. to H. & L.G.D., No.2291 dated the 24th Feb.1949.

Nair/-

Office of the R.L.A.

Bombay Land Revenue Code Acquisition of mines and mineral rights in alienated lands.

To acquire rights to mines and minerals in alienated lands legislation would be necessary providing for payment of compensation.

The question of making suitable provision for such acquisition can be best considered in relation to and along with the proposal of framing legislation for abolishing all special tenures.

Id.PML 9.3.
Remembrancer of Legal Affairs.

U.R. to R.D. No.2756 dated the 10th March, 1949.

Nair/-

Office of the R.L.A.

Recovery as arrears of Land Revenue though there are no arrears in the Khata Land Revenue Code 1879. S. 187.

The amount attached by the Civil Court Hubli in the hands of the Mamlatdar of Shiggaon was Rs.920/3/6. On the orders of the Collector x it was adjusted towards land revenue and mahal judi due from Mr. Deshpande for 1942-43. Since this amount will now be paid into the Court in pursuance of the attachment order the same can be recovered from Mr. Deshpande as arrears of land revenue because it was due on account of land revenue (See section 187 of the Land Revenue Code). The fact that there are no arrears in the Khatdar's Khata will not x come in the way of making recovery of the amount as arrears of land revenue. The view taken at '1' of the Revenue Department office note dated 27.12.43 is correct.

Id.PNL 27.3.

Remembrancer of Legal Affairs.

U.R. to R.D. No.3151, dated the 23rd March 1948.

Nair/-

L.D.R.I.No.2591 dt.

Submitted:

In his letter dated the 27th January 1949 the Collr. of Broach has reported that as his district is in the grip of a severe famine, the Dist. ~~Smtk~~ Deputy Collr., Broach Division, who is at present hearing appeals against the orders of Mamlatdars and Mahalkaris under the provisions of the Bombay Tenancy Act, should be relieved of that duty in order to enable him to pay more attention to scarcity work and that the duty of hearing appeals should be assigned to the Personal Assistant. The Collr. is however, doubtful whether the power of hearing appeals can be delegated to ~~x~~ the P.A. under s. 10 of the Land Revenue Code as the said Officer is not in charge of the revenue administration of the District. If the appellate powers cannot be exercised by the P.A., the D.M. has requested that Govt. should be ~~xx~~ moved to delegate those powers to him.

Nair/-

Office of the R.L.A.

Delegation of powers to P.A.

Bombay Land Revenue Code, 1879, Section 10.

The last paragraph of section 10, Land Revenue Code, can be resorted to by the Collector in the present case on general orders being issued by Government permitting delegation.

Id./PHL.
Remembrancer of Legal Affairs.

U.R. to R.D., No.3566 dated the 2nd April 1949.

Nair/-

Office of the R.L.A.

Restoration of forfeited lands purchased on nominal bids.

Bombay Land Revenue Code, 1879.

Seen and returned.

The view taken by the Revenue Department in respect of all the three points is correct. Under the proviso to section 10 of the Tolls on Roads and Bridges Act, 1875 all sums payable by the lessee under the terms and conditions of the lease are recoverable as arrears of land revenue and there being no special period of limitation prescribed under the Act, the limitation of sixty years under Art. 149 of the Limitation Act will apply.

Sd./ P.M.L.L.A.
Remembrancer of Legal Affairs.

U.R. to R.D., No.3668 dated the 2nd April 1949.

Nair/-

...held by clerk ...e Special Rec- ...y Officer.

...nd Revenue Code, 379. ...ections 14 & 167.

It appears that the property of the defaulter Gangappa Parappa Kusi was put to sale for the recovery of the arrears due to the Muddebihal Urban Co-operative Bank. The sale was held by the clerk of the Special Recovery Officer who was authorised by the Collector under section 167 of the Land Revenue Code. The question raised for R.L.A.'s consideration is whether the sale held by the clerk of the Special Recovery Officer is valid.

1. Section 167 of the Bombay Land Revenue Code provides that sales shall be made by public auction by such persons as the Collector may direct. By virtue of this provision the Special Recovery Officer was empowered to hold auction sales. It is contended that by virtue of section 14 the Special Recovery Officer could authorise his subordinate clerk to hold the auction sale in the present case. That section no doubt empowers the Special Recovery Officer to employ any of his subordinates to perform any portion of his ministerial duties. The expression "ministerial duties" has not been defined in the Act. Ordinarily, "ministerial duty" means a duty in which nothing is left to discretion; a duty performed by one acting under superior authority and not with unlimited control; a simple definite duty arising under conditions admitted or proved to exist and imposed by law (Iyer's Law Lexicon p.817) An officer empowered under section 167 of the Bombay Land Revenue Code is required to perform certain duties which involve the exercise of discretionary as well as mandatory powers: see last para of section 167, sections 170, 172, 173, 175 and 177. These powers cannot be considered as ministerial duties within the meaning of section

14. Moreover, in view of the general principle "Delegatus non potest delegare" the Special Recovery Officer had no power to delegate his powers of holding auction sales to his clerk. Consequently, the auction sale held in the present case by the clerk of the Special Recovery Officer does not appear to be lawful.

Id.PMG.23.2.
Remembrancer of Legal Affairs.

U.O. to R.D. No.2390, dated the 1st March 1949.

Nair/-17.

It appears that one Mr. Narhari Dwarkadas Parikh, managing Trustee of Harijan Ashram, Ahmedabad, requested the President District Local Board, Ahmedabad, to grant permission to the Ashram to lay an underground pipe across the Ahmedabad Sabarmati Rd. between C.Nos.512 and 562 of Wadaj, City Taluka. The President requested the Collr. to Grant the necessary permission From the Circle Inspector's report it appears that without waiting for permission, the Ashram authorities laid down pipe soon after they submitted the application. As the road under which the pipe has been laid is in charge of the D.L.B.Ahmd. the Collr. of Ahmd. referred the matter to the Commr. N.D. for instructions whether the permission of the Collr. to lay the underground pipe below a D.L.B. road is necessary and whether any rent is chargeable.

In his end. No.U.F.330 dt.23.8.49 the Commr. N.D. states that the Dholka-Sahij Road being a Local fund work was transferred by Govt. to the D.L.B., Ahmedabad under G.R. P.W.D. No.903 dt. 5.8.24. He considers that as the road vests in in the D.L.B., no permission from the Collr. is required and that the D.L.B. may permit the work on such terms and on payment of such rent as it may consider reasonable. He further holds that no assessment under sec. 45 read with sect. 62 of the Bom. Land Revenue Code 1879 is chargeable by Govt. in such cases.

The R.D. has referred the papers to the R.L.A. for his advice whether the view expressed in R.D. office note dt. 10.9.48 is correct.

Office of the R.L.A.

...y Land Revenue Code.
...tions 45 and 62.

Permission for underground pipes and assessment therefor.

On the assumption that the road vests in the District Local Board, Ahmedabad, as owner and that the Board derives profit for permitting the laying of underground pipes, the view taken by the Revenue Department on both questions is correct.

Id.Pt.L.
Remembrancer of Legal Affairs.

U.R. to R.D. No.3058, dated the 19th March 1949.

Nair/-

Office of the R.L.'s.

Permission under section 65 of the Bombay Land Revenue Code to a 'mirasdar' who is merely a tenant.

There is a clear distinction between a 'Mirasdar' and a permanent tenant, the former being an occupant of the land and the latter merely a tenant entitled to permanency subject to certain conditions. An occupant alone is entitled to apply under section 65 of the Bombay Land Revenue Code, for converting his land to non-agriculture and he alone is primarily liable for the payment of non-agricultural assessment (see section 136). Consequently unless the present applicant is a Mirasdar i.e. an occupant, the evidence of which appears to be lacking though he has been so described by the Mamlatdar in his ~~remark~~ report, at pages 23-26 of file III, he would not be entitled to apply under section 65 of the Code.

I&JPML.20.4.
Remembrancer of Legal Affairs.

U.R. to R.D.No.4379, dated the 21st April 1949.

Nair/-

Office of the R.L.A.

The Bombay Land Revenue Code 1879. Section 66.

under section 66 of the Land Revenue Code, 1879 it was open to the Collector either to evict the Trust or to levy fine in addition to non-agricultural assessment, when the unauthorized non-agricultural use of the plot was detected. The fact that the Collector neither evicted the Trust nor levied fine but merely levied non-agricultural assessment would mean that he decided not to take penal action for the unauthori-zed non-agricultural use. It would not now be open to him to take action under section 66.

Id./PML. 7.5.
Remembrancer of Legal Affairs.

U.R. to R.D. No.5059, dated the 9th May 1949.

Nair/-

Office of the R.L.A.

Restoration of forfeited land

Bombay Land Revenue Code, 1879.

Section 56, 86, 87 and 211.

Bombay Land Revenue Rules 1921. Rule 123 2 (d).

Survey No.302 and 303 of Hatnur, Taluka Jalgaon, which is a village of Inam Class I, originally stood in the name of the applicant, Kondaji R. Patil. He mortgaged the said survey numbers with Kunjilal Pirchand in the year 1932. It is the applicant's case that under the mortgage, which incidentally is described in the Mutation Register as oral, the mortgagee was responsible for paying land revenue or rent to the Dumaldar. The mortgagee, Kunjilal, made default in payment of the land revenue for the years 1934-35 and 1935-36. The Dumaldar filed assistance suits and obtained decrees for Rs. 27/1/6. This sum was not paid, and the survey numbers were eventually forfeited and were ordered to be transferred to the Dumaldar who is in possession thereof since the year 1938. The applicant complains that great injustice has been done to him by this forfeiture; and he apparently suggests that the lands be restored to him on payment of the arrears of rent.

2. The original papers relating to the forfeiture are not forthcoming. The Dumaldar is not prepared to accept the amount and restore the land. He points out that the application is made mischievously with a view to harass him; that the applicant was a confirmed defaulter in paying land revenue; that he was not a real agriculturist and deliberately avoided to pay land revenue; that he had disposed of almost all of the 15 or 16 survey numbers which he held for various purposes and had even resorted to obstructive and mischievous methods.

3. The Revenue Department note says: " ... It appears that the applicant is not a bona fide cultivator It further appears that the Dumladar is not prepared to part with the lands in question which were forefeited for recoveries of dues and subsequently passed into the hands of the Dumaldar. In the circumstances, Government,

would not be competent to do anything to help the petitioner". The R.L.A. is requested to advise whether the position stated in the R.D. note above is correct.

4. Under section 56 of the Land Revenue Code, as amended by Bombay Act VI of 1901, it is competent to the Collector to dispose of the occupancy or alienated holding under the rules made in this behalf under section 21 and such occupancy or alienated holding, when however so disposed of, shall unless the Collector otherwise direct be deemed to be free from all tenures, rights, incumbrances and equities theretofore created in favour of any person other than the Crown in respect of such occupancy of holding. Rules 123(d) of the Land Revenue Rules provides that in the case of an inferior holding forfeited on account of an arrear of rent or land revenue due to a superior holder for the recovery of which assistance is being rendered under sections 86 and 87 the Collector may in his discretion x transfer the holding to the superior holder thereof subject to such tenures, rights, incumbrances or equities, if any, as he may direct under section 65. It is of interest to note that the amendment made by the Act of 1901 and the insertion of this rule was apparently in consequence of the Full Bench decision in Narayan Vs. Parshotam(22 Bom. 389). The effect of the amendment of the rule has been considered in the case of Vedu Vs. Kalu (15 Bombay Law Reporter p.827), wherein it was ruled that under the operation of section 56 the land can vest free from the incumbrance which had been created and from the equities theretofore existing. It was open to the Collector under section 56 and rule 123(d) to direct that the transfer to the superior holder shall be subject to the applicant's equity of redemption. The Collector has not done so and therefore in accordance with the decision in Vedu's case the applicant has no remedy left in law, so long as the Collector's order stands.

5. The next question for consideration is whether

the Collector's order should be revised. Revision or modification, if any, has to be done under the powers given by section 211 of the Land Revenue Code.
One main difficulty in the exercise of these powers arises out of the use of the words "in his discretion" in rule 123((d). The ordinary principle is that where a statutory discretion is conferred upon an officer it would not be competed to the Provincial Government to substitute their own discretion for that of the officer. This ordinary principle would appear to be subject to the general powers of revision given to the Government under section 211. It must however, be confessed that this position is not quite free from doubt. Even under section 211 the Government must be satisfied that the order was not legal, proper or regular. The Collector's order cannot be described as illegal or irregular. At the most we may question the propriety of that order, in that the mortgagor is being penalised for what is described as the wilful default of the mortgagee. Whether that was so or not would again depend upon the truth of the allegations made by the applicant himself. These allegations are seriously questioned by the Dumaldar who points out that the applicant had full notice and even used obstructive tactics. In his statement before the Circle Inspector at page 27 of the case papers the applicant himself has admitted that the notice regarding forfeiture was affixed to his house, though he contends that he was not called upon to pay the arrears. The statement of the applicant that the notice was affixed to his house is corroborated by the statement of the Patil and the Talathi which is at page 31 of the case papers. These village officers also state in their statement that the applicant refused to pay the arrears on the ground that he was not responsible for payment, as the land was with the mortgagee. It is thus clear that the applicant had notice

of the forfeiture. If that be so, it was clearly the duty of the applicant mortgagor to pay the dues and thus avert the forfeiture. If he lay by inactive, he cannot be permitted after the lapse of 10 years to re-open the question and to demand restoration. It would, therefore, be difficult for Government, at this stage, to modify the Collector's order on the ground of impropriety and to insert therein the qualification that the transfer to the superior holder was subject to the applicants equity of redemption. That is the utmost that Government can do; but, in the circumstances of the case, I am not satisfied that this is a fit case ~~xxxx~~ justifying such interference on the part of the Government under section 211.

Id.PML.'30.12.
Remembrancer of Legal Affairs.

U.R. to R.O. No.18463, dated the 31st December 1918.

Nair/-

Civil Procedu-
Code Section 54.
Partition.

Office of the R.L.A.

In cases where the grievance of the parties is that the partition effected by the Collector under section 54 of the Civil Procedure Code is unequal, the party dissatisfied with such partition can have his remedy not through the Civil Court but on the revenue side i.e. by an appeal or in revision under the Bombay Land Revenue Code, 1879, Sec.12 Bombay 371 and 42 Bombay 680. The grievance in the present case being of an unequal partition made by the Collector, and appeal against that order of the Collector could lie to the Commissioner, who was competent to interfere with the Collector's order. It is stated in R.D. office note at p.79 ante that the panchnama in respect of partition was agreed to by both parties. This statement does not appear to be correct. The opponent (plaintiff) was not present when the partition was made and panchnama drawn up. His pleader was no doubt present and had also no objection to the partition as stated in the panchnama. But he made it quite clear and also stated in writing that he would contact the opponent and ascertain whether he would agree to the partition as stated in the panchnama. See page 8 of the file relating to partition of S.No.306 of Mahal Bagayat. Accordingly, he ascertained the view of the opponent and informed the Collector that the opponent was not agreeable to the partition as mentioned in the panchnama. See p.21 of the same file. The opponent actually applied to the Collector for revising the partition and when he failed in that attempt, he appealed against the order of the Collector to the Commissioner. In these circumstances it would not legally possible to say that the opponent is bound by the panchnama made in respect of the partition.

2. The question whether the Commissioner's order should be set-aside would depend on the

equitableness or otherwise of the partition ordered by the Commissioner. If Government considers that the Commissioner's order regarding the partition is inequitable and unreasonable, it would be open to Government to set aside the order of the Commissioner and restore the order of the Collector.

Id./PML 13.5.
Remembrancer of Legal Affairs.

u.r. to B.D. No.5293, dated the 13th May 1949.

Nair/-

Office of the R.L.A.

The question referred to the R.L.A. is whether the increased non-agricultural assessment, presumably with retrospective effect from the date when the altered used of the building commenced, could be levied in respect of lands for which an agreement in form of the kind signed by Mr. Gupte has been executed.

2. Under clause (3) of the agreement it is stipulated that the building shall be a residential building and the building regulations in the second schedule would be complied with in every respect. Condition 5 in the second schedule is to the effect that the building shall be used for residential purposes only. It is, therefore, obvious that in using the building for a maternity hospital a breach of the essential terms of the agreement has been committed. There is, however, no provision in the agreement for penalising such breach by the levy of fine or the recovery of enhanced assessment with retrospective effect. Ordinarily under the Bombay Land Revenue Code there is no power to levy revised assessment retrospectively (Ahmedabad Ginning and Manufacturing Co. Ltd. V. Secretary of State for India in Council 33 Bom. L.R. p.806).

3. Only two courses are now open in such cases. The first is to declare the land forfeited and to dispose it off in terms of condition (8) of the agreement. The second is to cancel the agreement for breach of its conditions on the ground that the party has refused to perform the contract in its entirety and it may be put to an end (section 39 of the Indian Contract Act) and thereupon to levy non agricultural assessment afresh at rates which will be relevant to the use in question (cf. the case of E.P.D. 'Abrad, Case No.1364 (C/188) at p.86 of the Selected Decisions of the Bombay Revenue Tribunal, Part II, for the period from 1st July to 31st December 1943).

Id./P.M.L.22.4.
Remembrancer of Legal Affairs.

U.O. to R.D. No.4483 dated the 23rd April 1949.

Nair/-

Office of the E.L.A.

Recovery of non-Agricultural assessment.

Bombay Land Revenue Code, 1879, sec.136.

The Collector should in the first instance demand the non-agricultural assessment from the landlord and in the event of his default the Collector should proceed to recover it from the tenant.

I.d Pml.
Remembrancer of Legal Affairs.

M.H. to H.D. No.6822 dated the 25th May 1942.

Mair/-

Office of the R.L.A.

Bombay Land
evenue Code.

Section 10
R.L.A.'s Opinion
No.3566
dated 2.4.46

Order 15 of the Orle s contained in Government Resolution (Revenue Department) No.5041 dated the 20th August 1002 appears to be a general order of ~~the Local Government authorising the~~ Government under the last paragraph of section 10 of the Land Revenue Code sanctioning the assignment by the Collector of his powers and duties under any other enactment also. In view of this Government Resolution no fresh general order of Government would be necessary to enable the ~~Assistant~~ Collector to assign his powers and duties under the Bombay Tenancy Act to his personal Assistant.

Id./PML/14.6.

U.R. to R.D.No.6309, dated the 15th June 1949.

I

R.P.No.7141 dt. 19.6.42.

Submitted.

2. The Collector of Poona has requested instructions on the question whether the practice prevailing in his district, of entertaining revision applications by the Collector in Record of Right cases should be discontinued and such revisional applications forwarded to Government for decision. The Commissioner C.D. considers that in view of the rule 108 of the Bombay Land Revenue Rules under which such revision applications can be entertained only by Government and that the practice is wrong. The R.D. considers that in view of section 135-L of the Bom. L.R. Code and rule 108 of the Land Revenue Rules neither the Commissioner nor the Collector is competent to entertain revision applications in such cases by resorting to section 211 L.R. Code and propose to ask the commissioner to discontinue the practice. The L.D., is requested to advise in the matter.

Office of the R.I.A.

Bom.L.R.Code
section 135.L.

Bom.L.R.Rules,
Rule 108

Whether revision
application can
be entertained
by the Collector or
Commissioner.

Seen and returned.

The view taken by Revenue Department is correct

Id.PM 22.6.
Remembrancer of Legal Affairs.

U.N. to R.D. No.6229 dated the 23rd June 1930.

Nair/-

Office of the R.L.A.

Question whether permission under section 65 of the Code could be applied for by any person other than occupant.

Land Revenue Code 1879. S. 65.

In his last opinion No.4379 dated 31st April 1949, the Remembrancer of Legal Affairs opined that "an occupant alone is entitled to apply under section 65 of the Bombay Land Revenue Code for converting his land to non-agriculture". Under Secretary, Revenue Department, considers that this opinion of the Remembrancer of Legal Affairs is not wholly true in that the word "alone" does not take into account the following in section 65 of the Land Revenue Code: "unless the Collector shall in particular instances otherwise direct, no such application shall be recognized except it be made by the occupant." The Remembrancer of Legal Affairs is requested to reconsider his previous opinion.

2. The view taken by the Under Secretary, Revenue Department is not correct. Para 2 of section 65 clearly provides that the Collector's permission in the first place be applied for by the occupant. It is nowhere stated that the Collector's permission shall be applied ~~xxx xx~~ for even by a person other than the occupant. The proviso to the third paragraph of section 65 gives certain rights to the occupant if his application had not been replied to within a period of three months. The proviso follows the provision "unless the Collector shall in particular instances otherwise direct." This provision has to be read with the second paragraph of section 65 and on so reading it would be clear that no application unless ~~xx~~ the Collector otherwise directs in particular instances shall be recognised unless it has been made by the occupant. This restriction is intended to prevent any accrual of right to the occupant under the proviso to the third paragraph if the application

has

has not been made by the occupant. The words "unless the Collector shall in particular Instances direct" are only intended to give discretion to the Collector xx to recognize applications made by persons other than the occupant in certain circumstances such as the illness or minority or the absence from India x of the occupant provided such applications are made on behalf of the xff occupants. Otherwise the inconsistency between paragraph 2 and this provision cannot be avoided. In Government Resolution No.6148 dated the 23rd May 1885 it was considered that a portion of patilki inam would not be allowed to be converted into building sites as only occupants as defined by section 3, clause (16), were considered to be entitl d to ask an' obtain permission under section 65. That view supports the R.L.A.'s opinion. Consequently, the Remembrancer of Legal Affairs, sees no reason to reconsider his previous opinion.

Id/PHL. 6.7.
Remembrancer of Legal Affairs.

U.R. to R.D. No.7492, dated the 6th July 1940.

Hair/-

Office of the R.L.C.

Permission of Collector to build on vacant plots in Gavthans which are subjected to agricultural assessment Bombay Land Revenue Code, 1879 - sections 65, 133. Schedule H.

The question raised for the consideration of the R.L.C. is whether the building sites in respect of which sanads have been issued under Schedule H to section 133 of the Bombay Land Revenue Code, 1879, but no non-agricultural assessment is levied would require the previous permission of the Collector under section 66 before any buildings could be erected thereon or they are actually converted to non-agricultural purposes. Under section 133 a sanad in the form in Schedule H has to be issued to every holder of a building site. There is nothing in the form of sanad in Schedule H to indicate that the site has been actually used or allowed to be used for building purposes. From Government Resolution, Revenue Department, No.4729/24, dated the 29th August 1932, it appears that it is to be stated in the sanad whether the assessment has been fixed and, if so, whether the assessment so fixed is agricultural or non-agricultural. "Building site" as defined in section 3(9) means a portion of land held for building purposes, whether any building be actually erected thereupon or not, and includes the open ground or court-yard enclosed by or adjacent to any building erected thereupon. It is, therefore, clear from section 133 read with section 3(9) that the sanad in the form in Schedule H, if the land is assessed to agriculture only, would only indicate that the land is intended for a building site but not so actually used or converted to non-agriculture. The first paragraph of section 65 allows an occupant of land assessed or held for purposes of agriculture to use it for purposes of agriculture. The second paragraph provides:

But ...

"But if any occupant wishes to use his holding or any part thereof for any other purposes, the Collector's permission shall in the first place be applied for by the occupant."

"Holding" as defined in section 3(13) means a portion of land held by a holder. The occupant of a building site would also be considered a holder of land. Under section 48 land is to be assessed with reference to the use thereof -

(a) for the purpose of agriculture,

(b) for the purpose of building, and

(c) for a purpose other than agriculture or building.

So long as a building site is assessed to agriculture, it shall be deemed to be used only for agriculture. Consequently, under paragraph 2 of section 65, the use of the building site for a building purpose would require the permission of the Collector provided it is assessed to agriculture. The building sites in the present case, being assessed to agriculture, could not therefore, be used for erecting a building without the permission of the Collector under section 65. The view taken by the Collector does not, therefore, appear to be correct.

Id.PHL 27.7.
Remembrancer of Legal Affairs.

U.R. to R.D. No.8609, dt. the 27th July 1949.

Hair/-

L. & R.I.No.8949 dt.17th June 1949.

Submitted.

Please see the R.L.A.'s opinion No.5822 dated 25.6.1949 and the papers underlying.

Apropos that opinion the J.S.R.D. presumes that :-

(i) there is no objection to entertaining the tenant's application for non-agricultural use in view of the occupant's consent.

(ii) that when the dues are to be collected in respect of the land, the demand should be first addressed to the occupant; and

(iii) that, when should the occupant fail to satisfy the demand, the tenant should be asked to do it.

The R.L.A. is requested to confirm.

Nair/-

The Bombay Land Revenue Code, 1879

Section 65.

Office of the R.L.A.

Question (1):- If with the consent of the occupant the lessee makes an application under section 65 of the Land Revenue Code for converting the land to a non-agricultural use there would be no legal objection to treating such application as one from the occupant himself and granting permission provided his consent is unconditional and to the effect that he would abide by all the conditions imposed by the Collector under section 67 of the Land Revenue Code.

The view expressed by Under Secretary, Revenue Department on questions (ii) and (iii) is correct.

Id./PHL 22.7.
Remembrancer of Legal Affairs.

U.R. to R.D. No.8341, dated the 23rd July 1949.

Nair/-

Question whether Government can evict Mr. Redij for using land for non-agricultural purpose un-authorisedly etc.
Land Revenue Code, 1879- Section 66.

The facts of the case do not appear to disclose a flagrant breach of the provisions of section 65 but an honest mistake on the part of Mr. Redij. Admittedly the plot bearing No.236-A 2 which forms part of the area over which the theatre has been erected, was originally converted to non-agricultural use temporarily for a period of 10 years. This land which was then converted to non-agricultural use has since been purchased by Mr. Redij. The entry in the Record of Rights did not mention that the land was converted to non-agricultural use for a period of 10 years only, but that it was converted for such use which means permanently. It is true that there was mistake on the part of Mr. Redij in failing to look into the Sanad which was issued to his predecessor, but there was no reason for him to commit any breach of section 65 of the land Revenue Code for while asking for permissionto use the other two adjoining plots for non-agricultural use he could as well have included this land also in his application for such permission if he were aware that the land was converted to non-agricultural use temporarily for a period of ten years only. Further, his statement was recorded by the Circle Inspector and a plan was prepared. That plan admittedly included this plot i.e. Survey No.236-A-2 as forming part of the area over which the theatre was to be erected. Although the Collector's order granting him permission to use for the non-agricultural purposes the area covered by the plan was granted to him. These facts indicate that there was a bonafide mistake on the part of Mr. Redij in omitting to include Survey No.236-A 2 in his application

It is not clear still the communication issued by the Mamlatdar clearly shows that the permission

for permission to convert it to non-agricultural use.

Under section 6[illegible] of the Land Revenue Code if any such land was used without the permission of the Collector being first obtained or before the expiry of the period prescribed by section 65 the occupant and any tenant or other persons holding or through him shall be summarily evicted by the Collector from the land so used and from the entire field or survey number of which it may form a part etc. Since Mr. Redij has used survey No.236-A 2 for non-agricultural purposes without the previous permission of the Collector he can be evicted from that part of the land i.e. Survey No.236-A 2. 236-A Hissa No.4/3B, 236-A Hissa No.4/2A and 236A 2 which comprise the whole area over which the theatre has been erected are given separate survey numbers. Consequently it may not be lawful to evict Mr. Redij from the other two survey numbers namely, 236-A Hissa No.4/3B and 236-A Hissa No.4/2A.

Section 67 of the Land Revenue Code provides that nothing in the last two preceding sections shall prevent the granting of the permission on such terms and conditions as may be prescribed by the Collector subject to any rules made in this behalf by the Provincial Government. Under Section 66 the occupant shall also be liable to such fine as the Collector may subject to the general orders of Government direct. It is, therefore, open to Government to condone the breach of the provisions of section 65 and grant Mr. Redij permission subject to any reasonable terms and conditions. It appears that Government proposes to levy a fine of Rs.50,000/- and condone the breach. In imposing the terms and conditions under section 67 Government must exercise its discretion properly

and equitably and not arbitrarily. The levy of a fine of Rs.50,000/- for the breach of the provisions of section 63 in respect of an area measuring 4½ Guthas assessed at Rs.6/- appears to be disproportionately heavy and may not be considered as a proper use of the discretion vested in Government.

Id./FML.
Remembrancer of Legal Affairs,

W.R. to P.D. No.10143, dated the 6th September 1949.

Office of the R.L.A.

Bom.LandRevenue Code section 94-A. Bom.Agri. Debtors Relief Act, 1947. Section 2(4) &4.

I do not think that sanction under section 94 A of the Bombay Land Revenue Code should be issued in this case. The sanction asked for relates to the recovery of dues which arose prior to the period for which claims could be made under the Bombay Agricultural Debtors Relief Act, 1947. Apparently the dues to be claimed by the superior holder would be debts within the meaning of section 2(4) of the Bombay Agricultural Debtors Relief Act, 1947. If so, applications in respect of such claims were required to be made within a period of six months under section 4 and those claims which were not made within that period would be deemed to be ~~extinguished~~ extinguished under section 15. Section under section 94A of the Bombay Land Revenue Code has not the effect of reviving any claims which are extinguished. The sanction under that section would afford a speedier and a less expensive course for the recovery of the dues as land revenue. Consequently, the claims which were not made within the prescribed period under the Bombay Agricultural Debtors Relief Act, and thus extinguished, would not be revived by reason of any sanction given under section 94A of the Land Revenue Code. The claims thus extinguished by reason of there being no application made within the prescribed period under section 4 of the Bombay Agricultural Debtors Relief Act would be extinguished and no sanction in respect of those claims under section 94A of the Land Revenue Code would be necessary. In respect of claims which have been already made under section 4 of the Bombay Agricultural Debtors Relief Act, the courts are already seized of such claims and a sanction given under section 94A of the Bombay Land Revenue Code would not have the effect of the courts being divested of jurisdiction. It would, therefore, follow that the sanction under

section 84A of the Bombay Land Revenue Code would serve no useful purpose in respect of claims which the courts under the Bombay Agricultural Debtors Relief Act would take cognisance of.

Id/-PHL 27.9.
Remembrancer of Legal Affairs.

U.R. to L.D.No.10375 dated the 28th September 1940.

Nair/-

Office of the R.L.A.

Sections 89 to 94 of the Bombay Land Revenue Code were repealed by sub-section (2) of section 30 of the Bombay Tenancy Act, 1939, which Act itself (except sections 3, 3A and 4 thereof) has been repealed by the Bombay Tenancy and Agricultural Lands Act, 1948. Clause (a) of section 7 of the Bombay General Clauses Act, 1904, provides that where any Bombay Act repeals any enactment then, unless a different intention appears, the repeal shall not revive anything not in force or existing at the time at which the repeal takes effect: Section 88 to 94 of the Bombay Land Revenue Code were not in existence when the Bombay Tenancy Act, 1939 was repealed. There is nothing to show an intention to revive these repealed provisions. Consequently these sections are not in force at present.

2. Incidentally it will be noticed from the revised edition of the Bombay Code that these sections have been shown as repealed.

Id./PML.28.10.
Remembrancer of Legal Affairs.

U.N.Do. R.D.No.12118, dated the 29th October 1949

Nair/-

No.27 of 1919

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 21st September 1919.

Sub: Lands Belonging - Nipani, Taluka Chikodi
Grant of non-agricultural permission in
respect of - certain - at

OPINION.

With reference to unofficial reference to the Advocate General, Bombay, No.10165, dated the 7th September 1919, I may state as under:-

In my opinion the view taken by the R.L.A. seems to be correct. Section 65 of the Bombay Land Revenue Code presupposes an application to be made only by the occupant of the land.

Such application should normally be made by the occupant himself if he wishes to use his holding for any non-agricultural purpose. The paragraph beginning with "unless the Collector shall in particular instances otherwise direct" really emphasises this fact and merely adds that when such application is made by a person other than an occupant, it x shall be recognised only in ax optional or special cases. In any event, the application must, however, be made on behalf of the occupant. If the application is made by a person who is not the occupant and the same has not been made on behalf of the occupant, the Collector in my opinion is not empowered to deal with such application under section 65. The second paragraph of the section deals with the wish of the occupant himself.

At first sight, it might appear that in particular instances the Collector has power to recognise an application made by a person other than the occupant, however, when one reads that provision carefully it only means this, that

that ordinarily the Collector will not even recognise an application made by a person other than the occupant. In certain circumstances, the Collector is entitled to recognise an application even if it is not made by the occupant. This means that, ordinarily apart from special circumstances, the application must be made by the occupant himself. It is only in exceptional circumstances that the Collector will recognise an application though not made by the occupant himself but made by any person on his behalf.

Sd/-MHA
Advocate General

Weir/-

Office of the R.L.A.

Statement of the Case.

Mr. L.P. Mehta of Nipani requested the Collector of Belgaum for permission to appropriate S.No.723/4-A and 723/5 of Nipani for non-agricultural purpose viz. for residential purpose. It was shown as the below line Kadjedar in the Record of Rights in respect of these survey numbers being a direct tenant of the land. The land is unalienated and he pays a fixed rent of Rs.32 annually. His request was refused in the past by the Collector and the landlord was informed that tenant's request to convert the land would not be granted in future without his consent. His appeal to the Commissioner, Southern Division was dismissed. The tenant has now renewed his request and from the record the Collector considers that his status cannot be different from that of the tenant in view of the definition of the word "occupant" in clause (16) of section 3 of the Bombay Land Revenue Code, 1879 and therefore he is not entitled to ask for non-agricultural permission without the consent of the landlord and as such his request cannot be considered. As the land was within city survey limits and the adjoining plots are built upon Revenue Department thought of granting the permission, and the opinion of the R.L.A. was sought.

On these facts the R.L.A. in his opinion No.12317, dated the 27th December 1948 (page 83 ante) advised Government as follows:-

> "The word Mirasdar is used in two senses. It is used incorrectly to mean a permanent tenant. It is also used, correctly, to mean a person who has the occupancy rights of land, that is to say, who is an occupant and not an tenant (See Vyasacharya Vs. Vishnu Vithal;

I.L.R. Bom.14; page 60[illegible]; at page 572 followed in Shripad Dalvant Vs. Ragu Mushaba, A.I.R., 1943, Bomba[illegible]; page 301 at page 303). In this case there is no evidence to show that Mr. Mehta or his predecessor in title Mohdin Chandkhan Naikwadi is the 'Hiredar in the latter sense, that is, in the sense of a person who has occupancy rights of the land On the other hand, the previous history shows that there is a superior holder who is objecting to the conversion of the land ~~xx~~ to non-agriculture purposes. In these circumstances, it will not be possible to hold that Mr. Mehta is an occupant for the purposes of section 65 of the Land Revenue Code. For, ~~xx~~ under section 3(18) of the Code an occupant means a holder in actual possession of unalienated land other than a tenant; provided that where the holder in actual possession is ~~[illegible]~~ a tenant the landlord or superior landlord, as the case may be, shall be deemed to be the occupant.

Revenue Department pointed out that the above opinion was not clear on the point whether in this case non-agricultural permission cannot be given under the proviso to section 65 of the Code.

In his opinion No.4379, dated the 26th April 1949 (p. 63 ante) the A.G. reiterated the view already expressed by him with the following observations:-

"There is a clear distinction between a 'Hiredar' and a permanent tenant, the former being an occupant of the land and the latter merely a tenant entitled to permanency subject to certain conditions. An occupant alone is entitled to supply under section 65 of the Bombay Land Revenue Code for converting his land to non-agriculture and he alone is primarily liable for the payment of non-agricultural assessment (~~xx~~ section 136). Consequently unless the present applicant is a Hiredar i.e. an occupant, the evidence of which appears to be lacking though he has been so described by the Mamlatdar in his report, at pages 28-30 of file III, he would not be entitled to apply under section 65 of the Code."

Revenue Department again pointed out that his Opinion is not wholly true in that the word above" does not take into account the following words in section 65 of the Code.

"Unless the Collector shall in particular instances otherwise direct, no such application shall be recognised except, it be made by the occupant."

The A.G. in his opinion No.7490 dated the 8th July 1948 (pages 67-69) ante) stated, as

follows:-

"Para. 2 of section 65 clearly provides that the Collector's permission in the first place be applied for by the occupant. It is nowhere stated that the Collector's permission shall be applied for even by a person other than the occupant. The proviso to the third paragraph of section 65 gives a certain rights to the occupant if his application had not been replied to within a period of three months. Then follows the provision "unless the Collector shall in particular instances ~~the Collector shall in particular instances~~ otherwise direct". This provision has to be read with the second paragraph of section 65 and on so reading it would be clear that no application unless the Collector otherwise ~~xxxxx~~ directs in particular instances shall be recognized unless it has been made by the occupant. This restriction is intended to prevent any accrual of right to the occupant under the proviso to the third paragraph if the application has not been made by the occupant. The words "unless the Collector shall in particular instances direct" are only intended to give discretion to the Collector to recognize applications made by persons other than the occupant in certain circumstances such as the illness or minority or the absence from India of the occupant provided such applications are made on behalf of the occupants. Otherwise the inconsistency between paragraph 2 and this provision cannot ~~xx~~ be avoided. In Government Resolution No.4148 dated the 23rd May 1865 it was considered that a portion of Patilki inam would not be allowed to be converted into building sites as only occupants as defined by section 3, clause (16), were considered to be entitled to ask and obtain permission under section 65. That view supports the R.L.A.'s opinion. Consequently the Remembrancer of Legal Affairs sees no reason to reconsider his previous opinion."

"Additional Under Secretary, Revenue Department is respectfully of the view ~~xx~~ that the R.L.A.'s interpretation of section 65 of the Bombay Land Revenue Code is not correct and the Collector can entertain the tenant's application under the exception in section 65 of the Code. In support of his view he has quoted Bombay Revenue Tribunal's decision B.R.T. file No.526 pages 55-57. It is proposed to dispense with the consent of the occupant by taking an indemnity bond from the ~~xxx~~ Mirasdar as was done in the Bombay Revenue Tribunal ~~xxxxxx~~ decision and the R.L. . is requested to obtain the Advocate General's opinion on the correct interpretation of the exception in section 65 of the Land Revenue Code.

In the Bombay Revenue Tribunal decision on an appeal from Mr. P.J.Bhatt, an occupant of C.No.304 of Paldi, against the order of the Collector of Ahmedabad granting the Trustees of the Sheth Chimanlal Nagindas Institution who were permanent lessees permission to erect a building for a hostel, Bombay Revenue Tribunal case ~~x~~ to the decision that it was ~~x~~ open to the Collector to hold that this was a particular instance in which he could recognize

-nd

and grant an application made by the trustees for non-agricultural use of the land even though it was not made by the occupant on the facts of that particular case. Moreover the Collector has safeguarded the interests of Government by taking an undertaking from the trustees to indemnify Government in respect of any legal consequences resulting from the dispensing with the signature of the occupant on the application for non-agricultural use of the land. This clearly shows that the Collector was doubtful whether he could grant such a permission under section 65 of the Code."

As Government desires that the Advocate General should be consulted on the question of interpretation of the provisions of section 65 he is requested to be so good as to express his opinion in the matter urgently.

Id./-PHL 6.9.49
Remembrancer of Legal Affairs.

U.R. to the Adv. General, Bombay No.10165 dt. 7th September

Nair/-

Office of the R.L.A.

A copy of the opinion of the Advocate General, Bombay, No.27, dated the 21st September 1949, together with the Statement of the Case is forwarded to the Revenue Deptt.

Id./Pdl. 27.9.
Remembrancer of Legal Affairs.

V.R. to F.D. No.10265, dated the 28th September 1949.

Nair/-

Office of the R.L.A.

In view of the order of His Highness the Nawab made in 1934, the accumulated amount will have to be distributed proportionately between the three claimants, namely, Government Khasa Sarkar and the mortgagee Marwadi.

It appears that the property of Syed Umar Hussein Miroo s is under attachment and management of Government as per order of His Highness the Nawab made in 1934. Apart from the legality or otherwise of that order under the provisions of the Land Revenue Code applicable to the Janjira State before its merger, it cannot now be allowed to stand for there is no provision in the Bombay Land Revenue Code, 1879 for such attachment and management of property (see section 150, section 153 being inapplicable). The order of attachment will have to be withdrawn and steps taken to recover the Government dues under section 150, read with section 137. The order of His Highness the Nawab made in 1934 being no longer operative, the ~~ex~~ claim of the Khasa Sarkar cannot be recognised and the Nawab can claim no share in the sale proceeds of the property. The Marwadi, whose claim of Rs.10,000 was recognised by His Highness and allowed to claim a proportionate share in the income of the property of the debtor, would ordinarily have priority, for, as held in Ahmed Hajl V. Parmanand (A.I.R. (1932) Sind 132), sale by Government of land for recovery of abkari revenue is subject to the prior mortgage of the land. But the Marwadi seems to have obtained his decree long ago and took also steps to bring the property to sale for realising his dues, But he failed since the State intervened and forfeited the property.

Probably the claim of Marwadi is now time-barred. However, in view of the fact that the Nawab's order of 1934 gave an assurance to the Marwadi that he could claim a proportionate share in the income of the property, and by holding that order now as inoperative and by refusing to recognise the mortgagee's claim on the ground of limitation, he would be greatly prejudiced. Government may, therefore, as an act of grace, allow him some share in the sale proceeds of the property in the event of his mortgage claim being time-barred.

Id./PML 18.10.
Remembrancer of Legal Affairs.

U.R. to A. & F.D. No.11651 dated 19th October 1949.

Nair/-

Office of the R.L.A.

'otters of
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'bde 1879.
'ection 83

Unless the facts are clearly established the discussion of law would serve no useful purpose. If R D. feels that the potters have a good case, they may order a regular enquiry so that both sides may lead evidence on their behalf. The evidence should properly sifted in the light of the provisions of section 83 of the Bombay Land Revenue Code, 1879 and thereafter the R.L.A. may, if necessary, be consulted.

Id./PNL.
Remembrancer of Legal Affairs.

U.R. to R.D. No.17814, dated the 14th November 1949.

Nair/-

Office of the H.L.A.

There will be no legal objection to Government repudiating the grant made to Mr. Manalal; and on such repudiation Mr. Manalal would be deemed to be in wrongful occupation and be liable to eviction under sect on 79A(a) of the Bombay Land Revenue Code, 1879. It would not therefore be necessary for Government to file a suit for possession. Government will have however no claim in respect of the land revenue recovered by Mr. Manalal before the order cancelling the grant.

Id./PHL.
Remembrancer of Legal Affairs.

U.R. to H.D. No.13622 dated the 28th November 1940.

Nair/-

Office of the D.L.

Bombay Land Revenue Code, 1879. Whether the grant of land out of S. Nos. 31- & 33 of Village Cove in Thana District can be cancelled.

Since the Commissioner, Northern Division by his order No.L.N.D. D.R.T.84, dated the 20th January 1940, has already cancelled the grant of the land in Kon village, it is presumed that the only question that now survives is that of the cancellation of the grant of lands in the village of Cove.

2. By Government Resolution, Revenue Department No.5954/39, dated the 31st July 1941, Government directed that the lands should be granted to Messrs Devji Dharsi and Son for the purpose of brick making on old tenure and on payment of occupancy price etc. The grant was subject to the provisions of the Bombay Land Revenue Code and the Bombay Land Revenue Rules and to the following further conditions:

(1) An area of 10 acres only should be first given to the grantee;

(2) the grantee should supply bricks to the Military authorities and/or any contractor specified by the Chief Engineer at the rate of Rs.15/- per 1,000 for the duration of the war;

(3) brick burning operations should be commenced on the minimum area required and no objection should be taken to the village cattle grazing on the land not actually so used;

(4) the land shall be liable to be forfeited to Government if the grantee fails to supply bricks to the Military authorities or for any breach of the conditions of the grant etc. The Kabulayat executed by the grantee contains similar terms. The Kabulayat executed does not refer to the grant of the lands for the specific purpose of brick manufacturing. The Commissioner in his report dated the 10th August 1940 at page 71

case states that this condition was not incorporated through inadvertance. The Commissioner further reports that there is nothing on record to show that the military authorities or any contractor complained against the grantee in regard to the supply of bricks ~~at~~ by him. He therefore, thinks that no breach can be said to have been committed and therefore there is no ground for forfeiting the lands. It appears that the view expressed by the Commissioner is not entirely correct. It is true that there is no specific condition in the Kabulayat as in the Government Resolution dated the 21st July 1941 that the lands were granted for the purpose of manufacturing bricks. But a perusal of the special conditions endorsed at the back of the Kabylayat at page 7 of the case papers shows that the grantee cannot use the lands for any purpose except brick manufacturing. Under condition 2 bricks were to be supplied to the military or to any contractor specified by the Chief Engineer. Condition 3 provides that the grantee shall not object to the land which is not actually used for brick manufacturing being used for grazing, nor shall he prohibit cattle on such land. This shows that the minimum of the space was to be utilized for brick burning and the rest was to be allowed to be used as grazing land. In other words he could not ~~as~~ use the land not actually required for brick burning for any other purpose. Condition 4 which provides for forfeiture of the lands for breach of any conditions would therefore be attracted if the lands in question were used for any purpose other than brick burning or if objection was taken by him for grazing. From the complaints made by the villagers it would appear that the

village cattle were not allowed to enter the land (not actually used for brick burning) for grazing. In that case there would still be breach of the conditions of the grant and the lands would in that case be liable to forfeiture. Revenue Department may like to investigate this point before passing final orders in the matter.

Id./PML. 7.12.
Remembrancer of Legal Affairs.

U.R. to R.D. No.14239, dated the 8th December 1949.

Nair/-

Office of the R.L.A.

The question referred to the R.L.A. for opinion is whether it is possible under the Bombay Land Revenue Code, 1879, by executive action either to effect a transfer of lands from a village in one revenue District to another District, or in the alternative, to create a new village out of a portion of an existing village and then transfer that new village to another Revenue District.

2. Attention is invited to the R.L.A.'s opinion No.540, dated the 15th January 1940, in which a similar question has been considered. In that opinion the R.L.A., after reviewing all previous opinions on the subject came to the conclusion that there was no provision in the Land Revenue Code empowering Government to transfer lands from one village to another. In view of the position stated in that opinion, it will not also be possible for Government by executing action to create a new village out of a portion of an existing village and then transfer that new village to another Revenue District.

3. It appears that in connection with the problem of the extension of the jurisdiction of the Bombay Municipality to the area comprising the Greater Bombay, it is intended to increase the limits of the Greater Bombay by including therein parts of some villages from the Thana District. The object in transferring parts of villages from the Thana District to the Revenue District of the Bombay Suburban, apparently is that the Collector, B.S.D., should for the purposes of the Bombay Land Revenue Code exercise jurisdiction over those parts and not the Collector of Thana, who, if the parts of the villages so transferred did not form part of the B.S.D., would, ordinarily exercise jurisdiction over those parts under the Bombay Land Revenue Code. To achieve this object the better course would be to make a provision in the law relating to the extension of the jurisdiction of the Bombay Municipality to the Greater Bombay to the effect

that notwithstanding anything contained in the Bombay Land Revenue Code, the parts of villages from the Thana District which are included in the "Greater Bombay" shall, for the purposes of the Bombay Land Revenue Code be deemed to have been included in and form part of the Revenue District of the Bombay Suburban.

Id./PHL.12.11.

Remembrancer of Legal Affairs,

U.R. to R. & L.C.D.No.13173, dated the 19th November 1940.

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(Pl see L.A.D opinion No. & 14734 of 19/12/45)

Office of the R.L.A.

Bombay Land Revenue Code, 1879, sections ~~xxxx~~ 65 & 66: whether S.No.690A/2 C of Talegaon Dabhade is unauthorizedly used for non-agricultural purpose.

The view taken by the Under Secretary, R.D. at 'A' of his note (p.30) is correct. In view of the fact that no reply was given to the application made by Messrs. C.S. Shah and his brothers within the period of three months the permission asked for would be deemed to have been granted under section 65 of the Land Revenue Code, but such permission would obviously be for the purpose for which the application was made and in accordance with the plan submitted. The applicants first wanted to use their land for the purpose of erecting a building for a residential purpose and accordingly they had submitted a plan. But later on they submitted another plan and asked for the Collector's permission under the Land Revenue Code. According to the revised plan they wanted to use the land for erecting a non-residential building. Consequently, the permission deemed to have been granted under section 65 of the Land Revenue Code for the purpose of erecting a residential building would not be available for the applicants to erect a non-residential building. Besides, the fact that they had submitted a revised plan and asked for the Collector's permission would estop them from contending that the permission deemed to have been granted under section 65 of the Land Revenue Code would extend to erecting a non-residential building. Consequently, the erecting a non-residential building by Messrs. C.S. Shah and his brothers would be unlawful and action under section 66 of the Land Revenue Code would be legally feasible.

Id/PML. 5.12.
Remembrancer of Legal Affairs.

U.R. to R.D. No.14154, dated the 7th December 1949.

Office of the R.L.A.

The Collector's order cancelling the agreement being ultra vires, the limitation of one year will not apply.

Id.PML. 19.12.

Remembrancer of Legal Affairs.

U.R. to R.D. No.14797, dated the 20th December 1949.

Nair/-

Office of the R.L.A.

Bombay Land Revenue Code 1879 Sec.211.

It is undisputed that the land has been granted to Mr. K.R.Talekar on 31.3.1943 for a non-agricultural purpose, i.e., for erecting onion chawls, on payment of occupancy price of Rs. 70 per acre and an annual assessment at the rate of Rs. 10 per acre, subject to the condition that it would be restored to Government whenever required on payment of the occupancy price only. The grant being contrary to the orders of Government contained in G.R., R.D.No. 1266/33, dated 23.4.34, and there being no sanad evidencing the grant, there would be no legal objection to cancelling the grant by Government in exercise of powers vested under section 211 of the Land Revenue Code (see Secretary of State v. Anant Mulkar, 36 Bom. L.R. p.242), but Government will have to pay compensation to the grantee on cancelling the grant. The sanad issued in form H under Rule 87 and the Kabulayat taken in form F ~~under rule~~ from the grantee would not afford any impediment to the cancellation of the grant inasmuch as the former relates merely to the altered assessment and not to the grant of the land itself, while the latter is a unilateral agreement creating no contract between the parties.

As stated above, the grant is subject to the condition that the land would be ~~xxx~~ restored to Government whenever required on payment of the occupancy price only." To require" is to demand, to insist upon having, to claim as of right, to exact, to claim as indispensable. "Whenever required" in the aforesaid condition would mean whenever demanded by Government. It is not necessary that the land should be needed by Government Consequently, it would be ~~xx~~ open to Government to demand the restoration of the land

whenever it pleases irrespective of whether it is needed by ~~x~~ Government or not. According to this condition all that Government would be required to pay would be the occupancy price only and not any compensation. If Government propose to enforce this condition, Government will have to treat the grant as valid. In the circumstances, it appears desirable that Government should direct that the grant is cancelled under section 211 of the Land Revenue Code on the ground that it was irregular and that even assuming that the grant is valid, Government demand the restoration of the land in pursuance of the condition attached to the grant, and consequently the grantee should make over the land to Government on receipt of the occupancy price.

Id./PML.8.11.

Remembrancer of Legal Affairs

U.O. to R.D.12834 dated 9th November 1949.

Nair/-

Bombay Land Revenue Code, 879, ection 65.

ombay enancy and gricultural ands Act, 948. ections 4(1)(c) nd 30

ransfer of roperty ct, 1882. ections and 08 (c).

It appears that the Revenue Department has decided to amend section 65 of the Bombay Land Revenue Code, 1879, enabling a permanent tenant to apply for permission to divert the use of the land for non-agricultural purpose. The question raised for consideration is whether it would be necessary to make consequential amendments in the Bombay Tenancy and Agricultural Lands Act, 1948.

Under section 14(1(c) of the Bombay Tenancy and Agricultural Lands Act, 1948, tenancy can be terminated if the tenant has used the land for a purpose other than agriculture. It would, therefore, ordinarily follow that a permanent tenancy would be terminable if the permanent tenant uses the land for a non-agricultural purpose even with permission under section 65 of the Land Revenue Code, unless, of course, such right is saved by any of the provisions of the Act. It is true that under section 30 it is provided that, save as otherwise provided in sub-section (1) of section 27, no other provisions contained in this Act shall be construed to limit or abridge the rights of privileges of any tenant under any usage or law for the time being in force or arising out of any contract, grant, decree or order of a court or otherwise, howsoever. Under this provision, the rights of a permanent tenant, though in no way limited or abridged by the provisions of this Act are saved. Under section 3 the provisions of Chapter V of the Transfer of Property Act shall, so far as they are not inconsistent with the provisions of this Act, apply to the tenancies and leases of lands to which this Act applies. Section 108(c) of the Transfer of Property Act prohibits a tenant from using or permitting another to use the property for a purpose other than that for which it was leased. The use by a permanent tenant for a non-agricultural purpose of an agricultural land even with permission under section 65 of the Land Revenue Code would be in contravention of section 108(c) of the

Transfer of Property Act and the right to use for a non-agricultural purpose not being ordinarily vested in the permanent tenant, section 30 of the Bombay Tenancy and Agricultural Lands Act would not be available. It appears, therefore, that the Bombay Tenancy and Agricultural Lands Act will have to be amended to save the termination of permanent tenancies in the event of the use of the lands for a non-agricultural purpose with the permission of the Collector under section 65 of the Land Revenue Code.

Id./JRD 4.11.

Additional Secretary to Government.

U.R. to R.D.No.12467, dated the 5th November 1943.

Nair/s

Office of the R.L.A.G

Bombay Land Revenue Code. Section 117-M.

Power to reduce or vary assessment- Legislation for -

After a settlement is introduced Government would be bound to levy the land revenue according to the settlement from such date as Government may direct (See section 117-O of the Bombay Land Revenue Code, 1879). Consequently once a settlement is introduced and the date fixed, it would not be competent for Government either to reduce or vary the rate of assessment in any year in the area unless it is covered by section 117 -M. If Government desires to have general power to reduce or vary the rate during the period of settlement it would be necessary to amend the Bombay Land Revenue Code.

Id./PH .13.12.
Remembrancer of Legal Affairs,

U.O. to R.D.No.14470, dated the 13th December 1949.

Nair/-

L.D.R.I.No.26577 dt.13/12.1949.

Submitted.

2. It is proposed in the R.D. papers to form a new village to be called "Vallabh Vidya Nagar" by transferring certain areas from the villages of Anand, Karmsad and Bakrol. The D.S.R.D. on this case observes:

> "It seems Government cannot take any steps to change the boundaries ~~xxxxxxxxx~~ villages at present. The R.L.A. may advise whether there is any way out or legislation is the only course open".

Office of the R.L.A.

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The view expressed in the Revenue Department Office note dated the 7th December 1949 is correct. (See R.L.A.'s opinion No.13175, dated the 19th November 1949). There is no way out except to take power by legislation.

Id. PML 18.12.

Remembrancer of Legal Affairs.

U.R. to R.D.No.14734, dated the 19th December 1949.

Nair/-